

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION

Agenda # III.A.2.

Agenda Item Summary: The Department requests that the Board adopt the proposed amendments to the water quality rules in accordance with the revised federal regulations pertaining to concentrated animal feeding operations, by changing the implementation date for nutrient management plans and updating federal references.

List of Affected Rules: This rulemaking would amend ARM 17.30.1303 and 1330.

Affected Parties Summary: The rule amendments affect most concentrated animal feeding operations. The rules would not affect CAFOs operating under existing permits that have developed and implemented a nutrient management plan.

Scope of Proposed Proceeding: The Board is considering final action on adoption of amendments to the above-referenced rules as proposed in the Montana Administrative Register. The Notice of Proposed Amendment gave interested parties until January 18, 2007, to request a hearing or to provide written comments. As of the date of preparation of this executive summary and the Board agenda, no comments or hearing request had been received. If no comments are received, the Department requests that the Board adopt the amendments as proposed. If comments/requests are received by January 18, the Department may request that the Board postpone action on this agenda item until its March meeting.

Background: Section 75-5-802, MCA, requires the Board to adopt rules, equivalent to federal rules, for the purpose of permitting concentrated animal feeding operations (CAFOs). The proposed amendments to ARM 17.30.1303 incorporate by reference the 2006 edition of the U.S. Environmental Protection Agency (EPA) rules applicable to CAFOs. The proposed incorporation by reference will adopt several new CAFO deadlines that EPA promulgated on February 10, 2006 (71 Federal Register 6978). The proposed amendments to ARM 17.30.1303 are necessary to ensure consistency between state and federal CAFO rules, as required by 75-5-802, MCA. The proposed amendment to ARM 17.30.1330 eliminates a duplicative incorporation by reference. 40 CFR Part 122.23 has already been incorporated in ARM 17.30.1303(av).

Hearing Information: The Notice of Proposed Amendment gave interested parties until January 18, 2007, to request a hearing or to provide written comments. As of the date of preparation of this executive summary and the Board agenda, no comments or hearing request had been received.

Board Options: If no comments/requests for hearing are received by January 18, 2007, the Board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Proposed

- Amendment;
- 2. Adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Proposed Amendment; or
- 3. Decide not to adopt the amendments.

DEQ Recommendation: The Department recommends that the Board amend ARM 17.30.1303 and 1330 regarding the incorporation by reference of current federal regulations pertaining to concentrated animal feeding operations, by changing the implementation date for nutrient management plans and updating federal references into the water quality rules. The public comment period ends January 18, 2007. At the time this executive summary was printed, no comments had been received. If no comments are received, the Department will recommend the adoption of the rule amendments as proposed. If comments are received by the comment deadline, the Department will summarize the comments and make a supplemental recommendation.

Enclosures:

- 1. Notice of Proposed Amendment (No Public Hearing Contemplated)
- 2. Draft Notice of Proposed Amendment